

Message Text

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ORIGIN EB-07

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R 140240Z SEP 76

FM SECSTATE WASHDC

TO AMEMBASSY CARACAS

C O N F I D E N T I A L STATE 226716

E.O. 11652: GDS

TAGS: EINV

SUBJECT: COMPTROLLER-GENERAL'S BACK TAX CLAIM

REF: (A) CARACAS 10644; (B) CARACAS 10795

1. APPRECIATE EMBASSY'S PROMPT REPORT (REF A) ON REAFFIRMATION OF COMPTROLLER-GENERAL'S BACK TAX CLAIM AGAINST OIL COMPANIES. WE ARE UNDECIDED WHETHER THERE IS ANY ACTION APPROPRIATE FOR THE USG TO TAKE AT THIS STAGE AND WISH TO CLARIFY SOME FACTUAL MATTERS AND SET YOUR THINKING ON SEVERAL POSSIBLE ACTIONS.

2. REFTTEL INDICATES SOME UNCERTAINTY AS TO THE NEXT STEP, FOLLOWING REAFFIRMATION OF THE CLAIM. OUR UNDER-CONFIDENTIAL

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STANDING, BASED ON DISCUSSIONS WITH EXXON AND GULF HERE

LAST SPRING AND REF B, WAS THAT THE COMPANIES HAD A RIGHT, WHICH THEY EXERCISED, TO PROTEST THE ORIGINAL CLAIM. TO MOVE THE PROCESS FORWARD, THE COMPTROLLER-GENERAL THEN HAD TO REJECT THAT PROTEST, (WHICH HE IS EVIDENTLY NOW DOING BY LETTER TO EACH COMPANY) AND PRESENT A TAX BILL. UPON RECEIPT OF THE TAX BILL, EACH COMPANY HAS 45 DAYS TO APPEAL TO AN ADMINISTRATIVE COURT WITH ORIGINAL JURISDICTION OVER INCOME TAX MATTERS. REF B INDICATES THAT EXXON BELIEVES IT WILL NOT BE REQUIRED TO PAY THE CLAIM OR POST

BOND IN ORDER TO APPEAL, BUT THAT, EVEN IF COMPANIES ARE RELIEVED OF PRIOR PAYMENT OR BOND, THE GOVERNMENT MIGHT REFUSE TO RELEASE NATIONALIZATION COMPENSATION FROM THE GUARANTY FUNDS PENDING FINAL COURT DECISIONS ON THE BACK TAX CLAIM.

3. EXXON FURTHER STATED TO US THAT THEY BELIEVED THAT THE COURTS WOULD BE DECISIVELY INFLUENCED BY POLITICAL RATHER THAN LEGAL CONSIDERATIONS. PLEASE COMMENT ON THIS.

4. WE WOULD APPRECIATE VERIFICATION THAT THE COMPTROLLER IS SENDING OUT TAX BILLS TO ALL COMPANIES, INCLUDING C.V.P., AND THAT, PROCEDURALLY, THE COMPANIES ARE AGREED THAT THE NEXT MOVE BELONGS TO THEM - PAYMENT, APPEAL TO THE ADMINISTRATIVE COURT, OR OTHER.

5. WE ARE CONCERNED BOTH BY THE POSSIBILITY OF AN EVENTUAL ADVERSE JUDGMENT AGAINST THE COMPANIES AND BY THE PROSPECT THAT COMPANY FUNDS MIGHT BE TIED UP PENDING A FINAL COURT DECISION WHICH COULD BE YEARS IN COMING. WE WOULD APPRECIATE YOUR ASSESSMENT OF USG ACTION, IF ANY, THAT MIGHT BE APPROPRIATE AT THIS TIME. FOR EXAMPLE, WOULD IT BE USEFUL FOR THE USG TO URGE, FORMALLY OR INFORMALLY, THAT THE COMPANIES BE ALLOWED TO APPEAL WITHOUT PRIOR PAYMENT OR BOND, OR THAT RELEASE OF MONEY FROM THE GUARANTY FUNDS NOT BE LINKED TO THESE APPEALS? IS THERE SOME WAY THE GOVERNMENT MIGHT BE BROUGHT TO OPPOSE THE COMPTROLLER-GENERAL'S CASE IN COURT; E.G. BY TAKING THE CLAIM AGAINST C.V.P. TO COURT?

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6. IN YOUR VIEW, WOULD THERE BE GROUND FOR THE USG TO PROTEST TO THE GOVERNMENT THAT THE TAX CLAIMS VIOLATE THE UNDERSTANDINGS REACHED BETWEEN THE COMPANIES AND THE GOVERNMENT AT THE TIME NATIONALIZATION COMPENSATION WAS SETTLED? WOULD IT BE APPROPRIATE AND DESIRABLE FOR THE USG TO POINT OUT TO THE GOVERNMENT THAT MAINTENANCE OF THE COMPTROLLER-GENERAL'S CASE COULD JEOPARDIZE THE COMPLEX SETTLEMENT WHICH THE GOVERNMENT WORKED OUT WITH THE LEADING

COMPANIES ON NATIONALIZATION AND THEREBY ENDANGER VENE-
ZUELA'S POSITION IN THE WORLD OIL MARKET? WOULD IT BE
DESIRABLE TO BRING TO THE GOVERNMENTS ATTENTION THE USG
RESERVATION OF RIGHTS OF DECEMBER 30, 1975 AND TO POINT
OUT THAT, SHOULD COMPANY-GOVERNMENT CONFLICT ERUPT OVER

THE TAX CLAIM, THE USG WOULD FEEL ENTITLED TO REOPEN THE
VALIDITY UNDER INTERNATIONAL LAW OF THE COMPENSATION
SETTLEMENTS AND RELATED USG RIGHTS?

7. ANY OTHER PROPOSALS WOULD BE WELCOME. ROBINSON

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